Titan Tire Corporation *and* United Steelworkers of America, AFL-CIO, CLC and its Local 164L. Case 18–CA–14863

April 30, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

On February 11, 1999, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief. In addition, the General Counsel and the Charging Party filed cross-exceptions and supporting briefs, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

Respondent Titan Tire Corporation (Respondent or Titan), which owns and operates several tire factories in locations around the country, purchased a tire manufacturing plant in Des Moines, Iowa, from Pirelli Armstrong Corporation in the summer of 1994. At the time of the purchase, approximately 650 plant employees were represented by the Charging Party, United Steelworkers of America, AFL–CIO, CLC and its Local 164L (Charging Party or Union). The Respondent and the Union negotiated a new collective-bargaining agreement in 1995, which expired on April 30, 1998.

The disputed issues in this case arise out of the parties' bargaining for a successor agreement and an ensuing strike. Although we agree with the judge's resolution of these issues, we find that two of them warrant further discussion.[3]

1. The conversion of the strike from an economic strike to an unfair labor practice strike

Titan and the Union participated in 35 to 45 bargaining sessions held over several weeks in the spring of 1998 in order to reach a successor agreement.[4] The parties were unable to reach a new agreement prior to the expiration of their contract. On May 1, the Union began a strike.

On May 14, Maurice Taylor Jr., president of Titan International, Respondent's parent corporation, and chairman of Respondent Titan, held a press conference during which he discussed the impact of the strike on the operation of the plant. Among other things, Taylor stated that[5]

> If there was no settlement, Titan would quickly move equipment out of the Des Moines facility to the Brownsville, Texas facility and it would be irreversible.[6]
>
> The number of employees in Des Moines would be reduced from 650 to 300, and the Des Moines plant would be turned into a warehouse.

The judge found, and we agree, that Taylor's statements about relocating equipment and jobs from Des Moines to Brownsville were threats in violation of Section 8(a)(1).[7] The judge also found, and we agree as we explain below, that the employees' strike was converted

[1] The judge found that the Respondent violated the Act by discontinuing four types of group insurance benefits for 24 employees who were on approved leaves of absence at the initiation of the strike. The Respondent's exceptions to the finding of this violation are limited to the following arguments: the Union waived the right of employees on leave to continued insurance benefits; the judge should not have permitted the General Counsel to amend the complaint at the hearing to include all four types, rather than just one type, of group insurance benefits provided to employees by the Respondent; and the Board's policy regarding the continuation of insurance benefits for employees on leave is unsound. We find no merit to these exceptions.

[2] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] In basic agreement with the cross-exceptions filed by the General Counsel and the Charging Party, we shall modify the judge's recommended Order in accordance with Board precedent to fully remedy the unfair labor practices that the judge found the Respondent committed.

[4] All dates hereafter refer to 1998 unless otherwise specified.

[5] The text of Taylor's statement is set out in detail in the judge's decision.

[6] In 1996, the Respondent had announced the construction of a new tire manufacturing facility in Brownsville.

[7] As the judge recognized, under Board precedent an employer is not required to bargain over "nonpermanent, stopgap, or temporary measures," such as temporary subcontracting, necessary to continue operations during a strike. *Land Air Delivery***,** 286 NLRB 1131, 1132 fn. 7 (1987), enfd. 862 F.2d 354 (D.C. Cir. 1988), cert. denied 493 U.S. 810 (1989). Here, however, Taylor announced that if the strike continued, the decision to relocate equipment and bargaining unit jobs from Des Moines to Brownsville would be "irreversible, and thus anything but temporary." Further, there is not the slightest indication in Taylor's statements that he intended to bargain with the Union about the permanent relocation decision. Indeed, the judge found that the Respondent thereafter proceeded to permanently relocate equipment and bargaining unit jobs from Des Moines to Brownsville without bargaining with the Union in violation of Sec. 8(a)(5) and (1) of the Act. In sum, just as it was unlawful for the Respondent unilaterally to relocate equipment and bargaining unit jobs on a permanent basis, so, too, was it unlawful for the Respondent to threaten to do so. See *King Radio Corp.,* 172 NLRB 1051, 1075 (1968) ("Employer threat to do that which he cannot under the Act lawfully do to employees constitutes independent violation of Sec. 8(a)(1)."), enfd. in pertinent part 416 F.2d 569 (10th Cir. 1969), cert. denied 397 U.S. 1007 (1970).

from an economic strike to an unfair labor practice strike when Taylor made the unlawful threats at the May 14 press conference.

A strike that begins as a dispute over economic issues may be converted to an unfair labor practice strike if the General Counsel establishes that "the unlawful conduct was a factor (not necessarily the sole or predominate one) that caused a prolongation of the work stoppage." *C-Line Express,* 292 NLRB 638 (1989), enf. denied on other grounds 873 F.2d 1150 (8th Cir. 1989). The Board will consider both objective and subjective evidence in assessing whether the General Counsel has met his burden:

> Applying objective criteria, the Board and reviewing court may properly consider the probable impact of the type of unfair labor practice in question on reasonable strikers in the relevant context. Applying subjective criteria, the Board and court may give substantial weight to the strikers' own characterization of their motive for continuing to strike after the unfair labor practice. [Id., quoting *Soule Glass Co. v. NLRB,* 652 F.2d 1055, 1080 (1st Cir. 1980).]

"Certain types of unfair labor practices by their nature will have a reasonable tendency to prolong the strike and therefore afford a sufficient and independent basis for finding conversion." Id. For example, the Board has "invariably concluded that the unlawful withdrawal of recognition prolongs a strike" because it puts an end to the collective-bargaining process. Id. at fn. 4. Similarly, the Board has held that the unlawful discharge of strikers is "a blow to the very heart of the collective-bargaining process" and "leads inexorably to the prolongation of a dispute." *Vulcan-Hart Corp.,* 262 NLRB 167, 168 (1982), enf. denied on other grounds 718 F.2d 269 (8th Cir. 1983).

Like the unlawful discharge of strikers, we find that Taylor's unlawful threats, which the judge aptly termed a "bombshell," inherently tainted the collective-bargaining process and necessarily prolonged the strike. In total disregard of the Respondent's statutory obligations, Taylor threatened that if employees continued in their protected concerted activity of striking, the Respondent unilaterally would relocate unit work to a nonunion facility, resulting in the elimination of the jobs of approximately one-half of the union-represented employees. Such blatant threats to bypass the Union and decimate the bargaining unit inevitably would tend to burden the negotiation process and delay the settlement of the strike. Accordingly, we find that Taylor's threats afford a sufficient basis for finding that the strike converted to an unfair labor practice strike on May 14. As discussed below, our conversion finding is confirmed by both subjective and objective record evidence.

Subjective evidence of strike conversion. Taylor's May 14 threats to move equipment and cut jobs in Des Moines if the strike continued and the subsequent moving and diversion of machinery from the plant were widely publicized in the Des Moines press, complete with pictures of flatbed trucks parked at the Des Moines plant being loaded with tire manufacturing equipment on its way to other Titan facilities. Union Vice President John Peno testified that newspaper articles covering Taylor's press conference, the equipment movement, and the strike were posted at the union hall, distributed at union meetings and on the picket line, and widely discussed among unit members. Peno also testified that Taylor's May 14 press conference "infuriated" the unit members and put additional pressure on the bargaining committee to "rectify the wrong."

Following the June 9[8] filing of unfair labor practice charges alleging that Titan violated the Act by "threatening to transfer bargaining unit work to a non-union plant if bargaining unit employees did not end their strike," the Union held a meeting at which it informed the strikers about the filing of charges and that the Respondent had just proposed its "last, best and final" offer. On June 19, the Union made a concessionary counterproposal. On June 20, the Union held two membership meetings to discuss bargaining strategy with unit members. At the June 20 meetings, because of the Respondent's final offer and its June 17 letter informing the strikers that they would be permanently replaced if they did not return to work, Peno had to "calm the membership down." Peno told the strikers that the Union had filed unfair labor practice charges. Then, Peno testified, "I read [the] charges in their entirety and I asked the membership in view of these charges and these illegal acts . . . do you want to continue the strike." The striking employees voted unanimously to continue the strike. They did not vote on whether to accept the Respondent's final offer.

Clearly, the record shows that the employees voted to continue the strike because of the Respondent's unfair labor practices. Given the record as a whole, i.e., the widespread publicity about the Respondent's actions and the employees' angry reaction, we find that the objectives of the strike were "expanded to include a protest over [the] unfair labor practices." *NLRB v. Top Mfg. Co.*, 594 F.2d 223, 225 (9th Cir. 1979).

Objective evidence of strike conversion. The parties bargained over five main issues during the course of their negotiations. One of those issues was job security at the Des Moines plant. In 1996, the Respondent had announced the construction of a new tire manufacturing facility in Brownsville, Texas. When the Respondent

[8] The judge inadvertently erred in stating that the Union's charge was filed on June 8.

made the announcement, the Union sought and received assurances that the Brownsville facility would have no adverse impact on the number of jobs at the Des Moines plant. The Union continued to seek and receive those assurances from the Respondent up through the start of bargaining in 1998.

Then, in response to the strike, Taylor reversed course at his press conference and announced that the equipment in the Des Moines plant would be sent to Brownsville and the Des Moines jobs would be cut in half if the strike continued. Within just a few weeks of Taylor's press conference, in early June, the Respondent began to remove manufacturing equipment from the Des Moines plant and ship it elsewhere. In addition, the Respondent began to divert manufacturing equipment originally destined for Des Moines to other plants.[9]

As an objective matter, we have no doubt, given that job security was a major issue at the bargaining table and of heightened concern for employees, that the Respondent's unlawful threats to move equipment from and reduce the number of jobs in Des Moines undercut the Union's negotiating position and prolonged the strike. Further, as a very real result of the Respondent's unlawful implementation of those threats, the Union's role in bargaining shifted from the *protection* of job security to the *restoration* of lost jobs. By adding to the list of bargaining issues one that was not present at the initiation of the strike, i. e., restoration of transferred equipment and lost jobs, the Respondent further undermined the Union's bargaining position and delayed the resolution of the strike.

Based on the above, we conclude, in agreement with the judge, that what began as an economic strike on May 1 was converted to an unfair labor practice strike by the Respondent's unlawful conduct on May 14.[10]

[9] The judge found, and we agree, that by unilaterally transferring and diverting equipment from Brownsville on a permanent basis, the Respondent violated Sec. 8(a)(5) and (1) of the Act.

[10] In its exceptions brief, the Respondent relies on *California Acrylic Industries,* 150 F.3d 1095 (9th Cir. 1998), and *F. L. Thorpe v. NLRB,* 71 F.3d 282 (8th Cir. 1995), cases in which the courts declined to enforce Board findings that strikes commenced as or converted to unfair labor practice strikes. We find these cases distinguishable. In *California Acrylics*, the court rejected what it characterized as a mechanical rule that a strike is an unfair labor practice strike if the union has the foresight to mention the unfair labor practice before the strike vote. The court found overwhelming evidence, both subjective and objective, that the strike was motivated solely by economic concerns. In *F. L. Thorpe,* the court found that the strikers' subjective motivations for continuing what began as an economic strike did not change at any time subsequent to the strike's inception. According to the court, the Board inferred that the unfair labor practices the respondent committed would prolong the strike, despite the overwhelming subjective evidence to the contrary offered by the strikers themselves.

In other words, both courts held that there was little, or no, evidence supporting the Board's conclusions regarding the nature of the strikes. By contrast, as discussed above, in the instant case, the record contains substantial evidence, both subjective and objective, supporting our finding that the strike converted to an unfair labor practice strike.

2. The Respondent's unilateral implementation of its final offer in the absence of a lawful impasse

On June 10, Titan notified the Union that it was submitting its "last, best and final offer." On June 22, the Respondent unilaterally implemented its June 10 contract offer. The Respondent contended that the parties were at a bargaining impasse and, therefore, the implementation action did not violate the Act. The judge concluded that the unremedied unfair labor practices the Respondent committed prevented the parties from reaching an agreement. For the reasons that follow, we agree with the judge that there was not a lawful, good-faith impasse because the Respondent's unfair labor practices contributed to the lack of an agreement.

The law is clear that "a lawful impasse cannot be reached in the presence of unremedied unfair labor practices." *White Oak Coal Co.,* 295 NLRB 567, 568 (1989). And, in the absence of a lawful, good-faith impasse, an employer may not unilaterally implement its final offer. Id. Indeed, an employer that has committed unfair labor practices cannot "parlay an impasse resulting from its own misconduct into a license to make unilateral changes." *Wayne's Dairy,* 223 NLRB 260, 265 (1976). However, not all unremedied unfair labor practices committed during negotiations will give rise to the conclusion that impasse was declared improperly, thus precluding unilateral changes. *Alwin Mfg. Co.,* 326 NLRB 646, 688 (1998), enfd. 192 F.3d 133 (D.C. Cir. 1999). Only "serious unremedied unfair labor practices that effect [sic] the negotiations" will taint the asserted impasse. Id., quoting *Noel Corp.,* 315 NLRB 905, 911 (1994). Thus, the central question is whether Titan's unlawful conduct detrimentally affected the negotiations over a new collective bargaining agreement and contributed to the deadlock.

In *Alwin,* 192 F.3d at 139, the court identified

> at least two ways in which an unremedied ULP can contribute to the parties' inability to reach an agreement. First, a ULP can increase friction at the bargaining table. Second, by changing the status quo, a unilateral change may move the baseline for negotiations and alter the parties' expectations about what they can achieve, making it harder for the parties to come to an agreement.

Applying the *Alwin* standard here, we find that, while the record is inconclusive on the "friction" issue, the evidence clearly shows that the Respondent's conduct moved the

baseline on issues over which the parties were bargaining and altered the parties' expectations about what they could achieve.

As detailed in the previous section of this decision, the record shows that:

> The Union's concern about job security at the Des Moines plant was a prominent issue at the bargaining table, as it had been since the Respondent announced the construction of the Brownsville plant in 1996.
>
> Taylor's May 14 threats to move equipment from, and reduce bargaining unit jobs at, the Des Moines plant substantially undercut the Union's position at the negotiating table on an issue that was of high priority to the bargaining unit.
>
> The Respondent implemented its threats by moving equipment from, and reducing the number of jobs at, the Des Moines plant.
>
> After Taylor's press conference and the moving of equipment from the plant, the Union was forced to bargain about restoring rather than protecting unit jobs.
>
> Taylor's May 14 press conference "infuriated" the unit members and put additional pressure on the bargaining committee to "rectify the wrong."

In addition, the Respondent unlawfully refused to provide information the Union requested regarding the moving of equipment from, and reduction of jobs at, Des Moines. It is manifest that such information would be necessary in order for the Union to represent employee interests in job security at the bargaining table.

The Respondent's threats directly related to job security and the subsequent implementation of those threats directly impacted job security. The Respondent's refusal to furnish information regarding the moving of equipment and reduction of jobs denied essential information about the same significant bargaining issue.[11] The effect of the Respondent's unlawful conduct was the sudden addition to the negotiations of a critical issue—the restoration of transferred equipment and lost jobs—about which the Union was forced to bargain in the dark without necessary information. We find that the consequence of the Respondent's unlawful conduct was to make it harder for the parties to come to an agreement. Having found that the Respondent's unremedied unfair labor practices contributed to the parties' inability to reach agreement, we conclude that the parties did not reach a good-faith impasse and that the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing its final offer on June 22.

[11] Standing alone, the refusal to furnish information about a subject so central to the parties' bargaining could preclude the finding of a lawful impasse. *United States Testing Co.*, 324 NLRB 854, 860 (1997), enfd. 160 F.2d 14 (D.C. Cir. 1998).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below, and orders that the Respondent, Titan Tire Corporation, Des Moines, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discontinue group insurance benefits for employees on approved leaves of absence at the time a strike begins; threatening to move equipment and bargaining unit jobs from the Des Moines, Iowa facility; threatening to employ permanent replacements for employees engaged in an unfair labor practice strike; and threatening to implement unilateral changes to employees' terms and conditions of employment without first having reached a valid, good-faith impasse through collective bargaining.

(b) Refusing to bargain collectively with United Steelworkers of America, AFL–CIO, CLC and its Local 164L, as the exclusive representative of its employees in the appropriate unit set forth below, about decisions entailing mandatory subjects of bargaining, including decisions to move equipment or bargaining unit jobs from the Des Moines, Iowa facility. The appropriate unit is:

> All full-time and regular part-time incentive and hourly-rated production and maintenance employees, including shipping, receiving and warehouse employees, janitors, storekeepers, powerhouse employees, finished tire inspectors, laboratory development employees only as defined by the National Labor Relations Board in NLRB Case 18–RC–7720, scheduling employees only as defined by the National Labor Relations Board in NLRB Case 18–RC–7791, but shall exclude executives, superintendents, foremen, supervisors, office and clerical workers, employees engaged in engineering, salaried, scheduling, laboratory and development work, including quality control technicians and plant protection employees, and any other non-certified office and clerical employees, engineers and professional employees, research and development employees, guards watchmen and supervisors as defined in the National Labor Relations Act.

(c) Refusing to provide the Union with information regarding the moving of equipment and/or jobs from Des Moines, Iowa, to Brownsville, Texas.

(d) Refusing to provide the Union with a list of replacement workers.

(e) Unilaterally changing employees' terms and conditions of employment without first having reached a valid, good-faith impasse in bargaining collectively with the unit employees' exclusive bargaining representative.

(f) Unilaterally changing group insurance benefits without providing notice to the Union and an opportunity to bargain about such changes.

(g) Discontinuing group insurance benefits for employees on approved leaves of absence at the time a strike begins in retaliation for the employees engaging in activity protected by Section 7 of the Act.

(h) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, reinstate its policy, in effect before May 1, 1998, regarding maintenance and/or payment of employees' health, dental, life and long-term disability insurance policies, for employees who were on approved leaves of absence as of May 1, 1998; notify those 24 employees in writing that it has done so; and make all affected employees whole for any losses they suffered as a result of the Respondent's illegal May 1, 1998 action, pursuant to *Kraft Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest computed in the manner prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

(b) On request of the Union, restore and resume production operations at its Des Moines, Iowa facility in a manner consistent with the level and manner of operation that existed before it commenced removing equipment in early June 1998; offer reinstatement to those bargaining unit employees who lost their jobs due to the removal of equipment that began in early June 1998; and make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with backpay and interest thereon to be computed in the manner prescribed by the Board in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), and *New Horizons for the Retarded,* supra.[12]

(c) Provide the Union with the information it requested on June 19, 1998, regarding the transfer of equipment and/or jobs from Des Moines, Iowa, to Brownsville, Texas; and the information it requested on June 21, 1998, regarding a list of replacement workers.

(d) On request of the Union, revoke its implementation of its last, best, and final offer on June 22, 1998; restore all terms and conditions of employment as they existed on June 22, *1998;* notify each bargaining unit member in writing that the foregoing has been done; and make whole any employees adversely affected by the unlawful June 22, 1998 implementation, pursuant to *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed in the manner prescribed in *New* Horizons *for the Retarded,* supra.

(e) On request, bargain in good faith with the Union as the exclusive representative of the employees in the unit set forth above concerning wages, hours, and other terms and conditions of employment, including the moving of equipment and jobs from the Des Moines, Iowa facility, until the parties reach an agreement or a valid good-faith impasse.

(f) On an unconditional application to return to work by any striking employee who was not permanently replaced prior to May 14, 1998, offer that employee immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, discharging, if necessary, any replacement hired on or after May 14, 1998; and make such employees whole for any loss of earnings and other benefits they may have suffered as a result of Respondent's refusal, if any, to reinstate them within 5 days of their unconditional offer to return to work, with backpay and interest thereon to be computed in the manner prescribed by the Board in *F. W. Woolworth Co.,* supra, and *New Horizons for the Retarded,* supra.[13] Such employees for whom employment is not immediately available shall be placed on a preferential hiring list for employment as positions become available and before other persons are hired for such work. Priority for placement on such list is to be determined by seniority or some other nondiscriminatory test.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[12] The parties are free to introduce at the compliance stage of these proceedings any evidence relevant to the appropriateness of the restoration and reinstatement portions of this Order, provided that such evidence was not available at the time of hearing on the unfair labor practices alleged and found herein. *Lear Siegler, Inc.,* 295 NLRB 857, 862 (1989).

[13] The Board has found that the 5-day period is a reasonable accommodation between the interests of the employees in returning to work as quickly as possible and the employer's need to effectuate that return in an orderly manner. *Drug Package Co.*, 228 NLRB 108, 113 (1977), modified on other grounds 507 F.2d 1340 (8th Cir. 1978). Accordingly, if the Respondent here ignores or rejects, or has already rejected, any unconditional offer to return to work, unduly delays its response to such an offer, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the unconditional offer to return to work. *Newport News Shipbuilding,* 236 NLRB 1637, 1638 (1978), enfd. 602 F.2d 73 (4th Cir. 1979).

(h) Within 14 days after service by the Region, post at its facilities in Des Moines, Iowa, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 1998.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

> Section 7 of the Act gives employees these rights.
>
> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to discontinue group insurance benefits for employees on approved leaves of absence at the time a strike begins; threaten to move equipment and bargaining unit jobs from the Des Moines, Iowa facility; threaten to employ permanent replacements for employees engaged in an unfair labor practice strike; and threaten to implement unilateral changes to employees' terms and conditions of employment without first having reached a valid, good-faith impasse through collective bargaining.

WE WILL NOT refuse to bargain collectively with United Steelworkers of America, AFL–CIO, CLC and its Local 164L, as the exclusive representative of our employees in the appropriate unit set forth below, about decisions entailing mandatory subjects of bargaining, including decisions to move equipment or bargaining unit jobs from the Des Moines, Iowa facility. The appropriate unit is:

> All full-time and regular part-time incentive and hourly-rated production and maintenance employees, including shipping, receiving and warehouse employees, janitors, storekeepers, powerhouse employees, finished tire inspectors, laboratory development employees, scheduling employees, but shall exclude executives, superintendents, foremen, supervisors, office and clerical workers, employees engaged in engineering, salaried, scheduling, laboratory and development work, including quality control technicians and plant protection employees, and any other non-certified office and clerical employees, engineers and professional employees, research and development employees, guards watchmen and supervisors as defined in the National Labor Relations Act.

WE WILL NOT refuse to provide the Union with information regarding the moving of equipment and/or jobs from Des Moines, Iowa, to Brownsville, Texas.

WE WILL NOT refuse to provide the Union with a list of replacement workers.

WE WILL NOT unilaterally change our employees' terms and conditions of employment without first having reached a valid, good-faith impasse in bargaining collectively with their exclusive bargaining representative.

WE WILL NOT unilaterally change group insurance benefits without providing notice to the Union and an opportunity to bargain about such changes.

WE WILL NOT discontinue group insurance benefits for employees on approved leaves of absence at the time a strike begins in retaliation for the employees engaging in activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, reinstate the policy, in effect before May 1, 1998, regarding maintenance and/or payment of employees' health, dental, life and long-term disability insurance policies, for employees who were on approved leaves of absence as of May 1, 1998; WE WILL notify those 24 employees in writing

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

that we have done so; and WE WILL make all affected employees whole for any losses they suffered as a result of our illegal May 1, 1998 action, with interest.

WE WILL, on request of the Union, restore and resume production operations at our Des Moines, Iowa facility in a manner consistent with the level and manner of operation that existed before we commenced removing equipment in early June 1998; WE WILL offer reinstatement to those bargaining unit employees who lost their jobs due to the removal of equipment that began in early June 1998; and WE WILL make them whole for any loss of earnings and other benefits, less any net interim earnings, plus interest.

WE WILL provide the Union with the information it requested on June 19, 1998, regarding the transfer of equipment and/or jobs from Des Moines, Iowa, to Brownsville, Texas; and the information it requested on June 21, 1998, regarding a list of replacement workers.

WE WILL, on request of the Union, revoke the implementation of our last, best, and final offer on June 22, 1998; WE WILL restore all terms and conditions of employment as they existed on June 22, 1998; WE WILL notify each bargaining unit member in writing that the foregoing has been done; and WE WILL make whole any employees adversely affected by the unlawful June 22, 1998 implementation, with interest.

WE WILL, on request, bargain in good faith with the Union as the exclusive representative of our employees in the unit set forth above concerning wages, hours, and other terms and conditions of employment, including the moving of equipment and jobs from the Des Moines, Iowa facility, until we reach an agreement or a valid good-faith impasse.

WE WILL, on an unconditional application to return to work by any striking employee who was not permanently replaced prior to May 14, 1998, offer that employee immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, discharging, if necessary, any temporary replacement hired on or after May 14, 1998; and WE WILL make such employees whole for any loss of earnings and other benefits they may have suffered as a result of our refusal, if any, to reinstate them within 5 days of their. unconditional offer to return to work, with interest.

TITAN TIRE CORPORATION

Florence I. Brammer, Esq., for the General Counsel.

Charles R. Armstrong, Esq., Akron, Ohio, for the Union.

Gene R. LaSuer, Esq. (Davis, Brown, Koehn, Shors & Roberts, P.C.), Des Moines, Iowa, for the Respondent.

DECISION

I. STATEMENT OF THE CASE

JERRY M. HERMELE, Administrative Law Judge. The United Steelworkers of America, AFL–CIO, CLC and its Local 164L (the Union), went on strike against Titan Tire Corporation's Des Moines, Iowa plant on May 1, 1998. In a September 15, 1998 complaint, the General Counsel alleges that, as the strike went on, the Respondent committed various unfair labor practices, thus violating Section 8(a)(1), (3) and (5) of the National Labor Relations Act. These alleged violations included discontinuing on-leave employees' insurance benefits, transferring equipment and jobs out of the Des Moines plant to other Titan facilities, and implementing a final offer without reaching a valid bargaining impasse. In September 28 and October 13, 1998 answers, however, the Respondent denied the unfair labor practice allegations and maintained that the continuing strike is purely over economic matters. It also maintained that the movement of equipment out of Des Moines was not something that needed to be bargained over.

A two-day trial was held in Des Moines, on October 13 and 14, 1998, during which the General Counsel called three witnesses and the Respondent called two witnesses. Both parties relied heavily on written evidence, primarily concerning their 1998 contract negotiations. Finally, the Union filed a brief on November 16, 1998, as did the General Counsel and the Respondent on November 17, 1998.

II. FINDINGS OF FACT

Titan Tire Corporation (Titan) manufactures tires for specialized vehicles, other than passenger cars and trucks. Its parent, Titan International, manufactures wheels and is headquartered in Quincy, Illinois. Titan derives annual gross revenues over $500,000, and receives over $50,000 annually in interstate goods at its Des Moines plant (G.C. Ex. 1(e); Tr. 51). In 1994, it purchased existing plants in Des Moines and Clinton, Tennessee to complement the company's wheel-manufacturing function. At the time, the Des Moines plant was owned by the Pirelli Armstrong Corporation (Pirelli). On July 16, 1994, one day after the Union called a strike, Titan purchased the Des Moines plant. Thereafter, the Union made an unconditional offer to return to work, Titan recognized the Union, and negotiations commenced, resulting in a new contract which ran until April 30, 1998 (G.C. Ex. 11; Tr. 52, 83–84, 319).[1]

After acquiring the Des Moines plant, Titan began to phase out the production there of smaller size tires, for vehicles such as lawn tractors, garden tractors, and golf carts. Instead, Titan focused on the market for vehicles using larger tires, such as agricultural tractors, and road constructing, logging and mining vehicles (Tr. 51, 259, 320–22). In turn, the work for smaller tires became centered in the nonunion Tennessee plant (Tr. 52-53, 263). To that end, various pieces of manufacturing equipment were transferred from Des Moines to Clinton, Tennessee from July 1995 to June 1996 (R. Ex. 16; Tr. 275–76). The Union never requested to bargain with Titan over these transfers (Tr. 277).

In late 1996, Titan announced its intention to build a new plant in Brownsville, Texas to provide additional manufacturing capacity for small and large tires (Tr. 47–48, 160, 326). According to Titan's President, Maurice Taylor, Jr., and Vice President William Campbell, it was not intended that Brownsville compete with, or siphon work away from, the Des Moines plant (Tr. 302, 325). Rather, Brownsville was being built because of its proximity to available rubber in Texas and offshore areas, and because of the nearby Mexican and South American tire markets (Tr. 324). Indeed, Taylor told Local 164L's President John Peno in 1997 that jobs would not be lost in Des Moines because of Brownsville (Tr. 327). The Brownsville plant is scheduled to be operational in early 1999 (Tr. 47).

There are 670 bargaining unit employees at the Des Moines plant (Tr. 83). In the first few months of 1998, Titan hired 72 new workers at Des Moines (Tr. 163). Also, there was overtime aplenty for the employees (Tr. 164). Bargaining for a new contract began on March 16, 1998, and encompassed 35 to 45- sessions. The main negotiators were Union President Peno and Titan's lawyer, Gene LaSuer (Tr. 116, 191). The parties never refused to meet with each other before the April 30 contract deadline (Tr. 188). The Union's main issues were the following: pension benefits; retiree medical benefits; elimination of the two-tier wage system;

[1] The contract was between Titan and the United Rubberworkers, which later merged with the United Steelworkers on July 1, 1995 (Tr. 85).

job security; and reduction of overtime (Tr. 183-84). In late March and April 1998, Titan and the Union exchanged written proposals (G.C. Exs. 24–25; R. Exs. 3–7). But no agreement was reached as of 11:45 p.m. on April 30. Thus, notwithstanding Titan's request that the Union stay on the job past the April 30 contract expiration, the Union commenced a strike on May 1, 1998 (Tr. 85, 193–96).

Titan employees were covered by health, dental, life, and long-term disability insurance policies2 (G.C. Exs. 19-23). When the employees began their strike, they lost their coverage under these policies (Tr. 70). Several employees at the Des Moines plant were on approved leave at the start of the strike (G.C. Ex. 12). Before the strike, these employees' coverages remained in effect, provided they paid their share of the policy's premiums (G.C. Ex. 8). On May 1, however, without prior notice to the Union, Titan sent 24 of the employees on leave a letter, stating that "due to striking conditions you are no longer covered under the Titan Tire Corporation Health Plan as of May 1, 1998." But Titan explained that these employees could continue the health and dental insurance on their own (G.C. Ex. 7).

The collective-bargaining agreement which expired on April 30 was silent as to any employee's coverage for insurance purposes after April 30 (G.C. Ex. 11, pp. 47–49). The four insurance plans were likewise silent. The issue of whether such coverage should continue beyond the expiration of the contract was not discussed during the negotiation of the contract in 1994–95, or during the spring of 1998. By contrast, the Union's old contract with Pirelli provided for a 90-day grace period for insurance coverage following that contract's expiration (Tr. 240–42).

Within two weeks after the strike began, Pirelli and General Tire began to take the tire molds they owned out of Titan's Des Moines plant (Tr. 260–62). This resulted in a loss of business and jobs (Tr. 303–04). Taylor informed Peno that the loss of the molds meant the possible loss of work at the plant (Tr. 329). According to Peno, though, Taylor said that the plant was operating with supervisors and that production at Des Moines "wasn't suffering" a few weeks into the strike (Tr. 336).

On May 14, 1998, Taylor held a press conference in Des Moines in which he stated:

> We . . . have to make some decisions real fast. So what we attempt, to not end up with a settlement, then we will start moving equipment out of the Des Moines facility to the Brownsville location and it will be irreversible. We hope between now and then that this does not happen. . .
>
> Once you start to move equipment, the riggers will come to move. It'll move fast, it's not gonna be a truckload, it's gonna be a lot of truckloads . . .
>
> No, what's gonna happen is you've got 650 now. Let's just say that you, that you never get anybody back. Then there's, what's gonna happen you've gotta have a workforce of 300. For these who do come back and those who you hire . . .
>
> That's it. That's it. I won't go any higher. I'll guarantee it. Someone out there might say it will, but, you know, they got a different crystal ball than I got. . .
>
> You'd just make [the plant] smaller. You'd just cut it right down and turn most of it into warehouse.
>
> Brownsville doesn't have a damn thing to do with what's going on here except that if we're not going to, if we gonna have a problem here, then it just makes your decision real simple. And it's not just the situation with the, um, what do you want to say, with the, just the workers, well you've got a bunch of state problems too with the taxes. So instead of saying hey it's no question, this will always be our highest labor cost plant. We already recognize that.

(G.C. Exs. 2–3). In this connection, Titan decided that three tiring curing presses, which were originally destined for delivery to Des Moines, would be installed elsewhere (Tr. 34, 37, 40, 76-77). Further, Titan decided in June 1998 that other tire building equipment currently installed in Des Moines would be shipped to Brownsville (G.C. Ex. 6; Tr. 41–46, 57–66). And so it was (Tr. 81). Equipment would also be moved to Tennessee and to a Natchez, Mississippi plant which Titan had just acquired (Tr. 52–53, 77–78). According to Titan Tire President Gary Carlson, however, these latter equipment transfers were "not on a permanent basis" (Tr. 78). According to Peno, he received no notice of the diversion or transfer of equipment from Des Moines, at any time since 1995 (Tr. 158, 234, 337). But Vice President Campbell testified that union members, including John Carroll, who was on the negotiating committee, helped to disassemble the equipment bound for transfer out of Des Moines. Campbell added that no union member ever complained about these transfers (Tr. 295–96, 307, 309–10).

On June 18, 1998, Carlson wrote Peno:

> Despite the misinformed rhetoric given to the media by some of your membership, you know the equipment we moved was not idle equipment. It was being used to manufacture tires until April 30, 1998. . .many jobs were lost because we have decided to place equipment that had been purchased for Des Moines in other manufacturing facilities. Movement of the equipment and the loss of jobs are the result of your committee's decision to continue the strike.

(G.C. Ex. 4). Then, on June 25, Carlson answered Peno's June 19 letter inquiring about the "movement of jobs to Brownsville" (G.C. Ex. 47) as follows:

> The "loss" of jobs in Des Moines is made up of three components. First, as a result of decisions by Titan Tire management, equipment originally destined for installation in Des Moines will now be installed at another location or locations. Second, there will be a loss of jobs with Titan Tire's decision to consolidate certain product lines in different locations. Third, there is a loss of jobs due to a loss of business as a result of the strike.

(G.C. Ex. 5).

Bargaining continued between Titan and the Union through May and June 1998, with the exchange of various written proposals (G.C. Exs. 26–35; R. Exs. 8, 13). On June 9, 1998, Peno wrote Carlson a letter "demanding that Titan bargain. . . over the decision to transfer bargaining unit work from the Des Moines facility. . . ." (G.C. Ex. 36). LaSuer responded by letter on June 10, stating that "[u]nder the expired contract and the tentative agreement between the parties, Titan has the right to establish where it will produce its products" (G.C. Ex. 37). Also on June 10, LaSuer wrote that, [s]ince the parties have been unable to reach agreement, Titan Tire now submits to the union its last, best and final offer" (G.C. Ex. 38). In response to both of LaSuer's letters, Peno wrote two letters of his own. First, regarding the movement of jobs from Des Moines, Peno stated that there was no "enforceable tentative agreement between the parties presently in effect" (G.C. Ex. 40). And regarding Titan's final offer, Peno stated that "the union has made substantial movement towards narrowing the gap between the parties' positions." Thus, Peno concluded that "the parties are not at impasse" (G.C. Ex. 41). Yet Peno testified that Titan's June 1, 1998 offer (G.C. Ex. 33) "represented some regression" (Tr. 131–33).

On June 8, 1998, the Union filed unfair labor practice charges again Titan, alleging that Titan threatened to transfer 300 jobs from Des Moines if the employees did not end their strike (G.C. Ex. 1(a)). Peno held a special meeting with his membership on June 20 to discuss these charges and to inquire if the employees wished to continue the strike. They voted yes (Tr. 154–56).

The Union never responded to Titan's June 10 "last, best and final" offer (Tr. 225). On June 18, Carlson wrote Peno that "if employees do not return to work, Titan Tire has the right to permanently replace the workers" (G.C. Ex. 45). Also on June 18, Peno wrote Carlson that because the employees were now engaged in an unfair labor practice strike, Titan could not permanently replace these workers. Peno added that the Union "is willing to make substantial additional movement from its current bargaining positions." (G.C. Ex. 46). So, Peno submitted a new written proposal on June 19 (G.C. Ex. 47). But he also asked for detailed information regarding the equipment and jobs being moved out of Des Moines (G.C. Ex. 47). Titan never provided any (Tr. 151–52). Then on June 21, the Union asked for "an up-to-date seniority list (including probationary employees), which includes names, addresses, clock numbers, telephone numbers, hire dates, birth dates and other information customarily provided to the union." (G.C. Ex. 48). Titan never provided this data (Tr. 153). As of June 22, Peno testified that the parties were "very, very close" on certain issues (Tr. 158). But Peno conceded that all the major issues were unresolved on June 22 (Tr. 157). So, on that day, Titan unilaterally implemented its June 10, 1998 offer (G.C. Ex. 49). And the parties did not meet thereafter (G.C. Ex. 9). According to Titan, it has operated ever since with replacement workers.3 On

[2] Apparently, there were no employees receiving disability insurance benefits during the strike (Tr. 115–16).

[3] See page 6 of the Respondent's brief.

August 7, 1998, Carlson opined that the transfer of equipment from Des Moines to Brownsville cost Des Moines "between 30 and 50 unit jobs," that 100 to 150 more jobs "could" be lost at Des Moines, and that "there will be between 50 and 100 new jobs in Brownsville that, had there been a satisfactory agreement and sufficient labor, would have been in Des Moines." (G.C. Ex. 10). Also in August 1998, more equipment was transferred from Des Moines to Brownsville (R. Ex. 16).

III. ANALYSIS

The General Counsel's allegations against Titan cover the following four subjects: (a) the unilateral discontinuance of insurance benefits for the Des Moines employees who were on leave as of the start of the strike on May 1, 1998; (b) the transfer of manufacturing equipment and/or jobs out of the Des Moines plant during the strike; (c) Titan's hiring of replacement workers and June 1998 failure to provide the Union with a list of those workers; and (d) Titan's unilateral June 22, 1998 implementation of its last, best and final offer when there was no genuine, good-faith bargaining impasse with the Union. Moreover, the General Counsel alleges that certain of these unfair labor practices converted the May 1, 1998 economic strike against Titan into an unfair labor practice strike as of May 14, 1998.

A. The Discontinuance of Insurance Benefits for Employees on Leave

Titan was justified in discontinuing the insurance coverages for striking employees. Doing so regarding the 24 employees on leave at the start of the strike—who never joined the strike—is another story. It is clear that, under these circumstances, Titan must "come forward with proof of a legitimate and substantial business justification for its cessation of benefits." In that regard, Titan may show that the expired collective-bargaining agreement explicitly waived the on-leave employees' right to continue to receive these insurance benefits. Alternatively, Titan may rely on a reasonable interpretation of some other portion of the collective-bargaining agreement. *Texaco, Inc.,* 285 NLRB 241, 246 (1987).

Here, Titan relies solely on two facts: the Union's expired 1994 agreement with Pirelli provided for a 90-day extension of benefits; and the instant 1995–98 contract with Titan was silent on the subject. In sum, Titan contends that the Union implicitly waived its right to continue insurance benefits for these 24 employees after the expiration of the contract by failing to insist in 1995 upon such a provision in the contract and by failing to discuss it in the spring of 1998 before the expiration of the contract. But Titan cites absolutely no legal support for its position. Rather, the law is clear that such a waiver must be explicit. Therefore, the 24 on-leave employees' insurance benefits "are a term and condition that survive the expiration of the collective-bargaining agreement and are a mandatory subject of bargaining that an employer cannot alter without providing the union an opportunity to bargain." *Jim Walter Resources*, 289 NLRB 1441 (1988). Accordingly, because it is concluded that Titan's unilateral and surprise termination violated Section 8(a)(1), (3) and (5) of the Act, it will be required to reinstate those insurance policies and make all affected employees whole.

B. The Movement of Equipment From Des Moines

Titan transferred equipment from its union plant in Des Moines to its nonunion plant in Tennessee from 1995 to 1996 without any loss of jobs in Des Moines. And the Union never complained. Later in 1996, Titan informed the Union that it was building a new plant in Brownsville, Texas and, again, that there would be no job loss in Des Moines. Likewise, the Union never complained. But after the Union began its strike on May 1, 1998 at Des Moines, Perelli and General Tire removed their own equipment therefrom, resulting in a loss of business there. Also, Titan rerouted three 100-inch presses originally scheduled for delivery in Des Moines, to Brownsville. Further, still more equipment was transferred, on a temporary basis, from Des Moines to Titan's two other plants in Tennessee and Mississippi. And from May through August 1998, Titan-owned equipment was, according to President Taylor, permanently transferred from Des Moines to Brownsville.

As all the parties recognize, Titan's equipment transfers from Des Moines must be evaluated pursuant to the standards set forth in *Dubuque Packing Co.*, 303 NLRB 386, 391 (1991), enfd. sub nom. *Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24 (D.C. Cir. 1993). In that case, the Board recognized that an employer's decision to relocate bargaining unit work may be a mandatory subject of collective bargaining:

> Initially, the burden is on the General Counsel to establish that the employer's decision involved a relocation of unit work unaccompanied by a basic change in the nature of the employer's operation. If the General Counsel successfully carries his burden in this regard, he will have established prima facie that the employer's relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the new location varies significantly from the work performed at the former plant, establishing that the work performed at the former plant is to be discontinued entirely and not moved to the new location, or establishing that the employer's decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence: (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate.

Applying these guidelines to the facts of this case, it is concluded that the General Counsel has met his initial burden of showing that Titan relocated the same unit work from Des Moines to Brownsville on a permanent basis. First, President Taylor clearly stated on May 14 that the transfer "will be irreversible" and that the Des Moines workforce would shrink from 650 to 300. Although there was no *permanent* loss of jobs at Des Moines at the time of the General Counsel's September 1998 complaint, by virtue of the fact that Brownsville was still being built, that plant is scheduled to open in early 1999. Second, the evidence indeed shows the transfer and diversion of significant amounts of equipment from Des Moines to Brownsville from May to August 1998. While Titan Vice President Campbell opined that equipment headed to Brownsville was either obsolete or excess and, accordingly, that there was no job loss at Des Moines (Tr. 296–99), that view was contradicted. Specifically, plant President Carlson wrote on June 18 and June 25, 1998 that "the equipment we moved was not idle equipment" (G.C. Ex. 4), and that there was in fact a loss of jobs at Des Moines (G.C. Ex. 5). Therefore, the General Counsel has proven that, without bargaining over the subject, Titan relocated "unit work unaccompanied by a basic change in the nature of the employer's operation." However, based on Carlson's unrebutted testimony, Titan's unilateral equipment transfers to Tennessee and Mississippi did not violate the Act because these were temporary measures taken to continue operation during the pendency of the strike. See *Land Air Delivery*, 286 NLRB 1131 (1987).

Turning to Titan's asserted, opaquely asserted, and unasserted defenses, it first contends that the work transferred from Des Moines involved only small-to-medium size tires, which were no longer being manufactured in Des Moines. But the evidence before May 1, 1998 only establishes that production of these smaller tires was decreasing in Des Moines, not that it had stopped or would stop altogether. Second, Titan unpersuasively argues that the decision to relocate work in Brownsville was made before the May 1 strike. Although Titan began transferring equipment to Brownsville on the eve of contract negotiations with the Union in February 1998, there is simply no evidence that it decided to relocate any jobs, much less 300 jobs, to Brownville that early. Indeed, management informed the Union in 1996 that Brownsville would have no adverse impact on Des Moines. Third, Titan argues that Taylor's May 14, 1998 comments about a loss of Des Moines jobs were prompted by the decisions of Pirelli and General Tire to take their tire molds out of Des Moines. While these tire molds were indeed removed, no doubt resulting in the loss of some business in Des Moines, the Presiding Judge does not believe that Titan has sufficiently proven that the loss of over 300 jobs in Des Moines was caused solely by the decisions of Pirelli and General Tire. Indeed, Taylor said nothing about Pirelli and General Tire in his May 14 statement. Fourth, Titan contends that the Union waived its right to bargain over the transfer issue because certain union members knew about the movement of equipment before the strike began. But there is no substantial evidence that any union member knew about the resulting loss of jobs before May 1, 1998. Also, Union President Peno credibly denied knowing of any such plans by Titan. Moreover, knowledge about various equipment shipments, scattered among union members, does not constitute a valid waiver by the Union of its right to bargain over such a key issue as the loss of almost one-half of the Des Moines workforce. See *Intermountain Rural Electric Assn.*, 305 NLRB 783, 786 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993). Fifth, the General Counsel and the Union address Titan's anticipated defense of the "management rights" clause of the expired collective-

bargaining agreement. However, Titan failed to advance this defense in its brief. And it did so for a good reason: that clause did not contain a "clear and unmistakable" waiver of the Union's right to bargain over the relocation issue. See *Dubuque*, supra at 397. Moreover, any such clause expired with the collective-bargainging agreement on April 30, 1998. *Furniture Rentors of America*, 311 NLRB 749, 751 (1993), enfd. in relevant part, 36 F.3d 1240 (3d Cir. 1994). Sixth and finally, Titan produced absolutely no evidence at trial regarding the relative cost of labor in Des Moines and Brownsville; a key defense recognized by the Board in *Dubuque*. In short, Titan has failed to rebut the General Counsel's showing.

To summarize this issue, Titan violated Section 8(a)(1) on May 14 when Maurice Taylor threatened to relocate over 300 jobs from Des Moines to Brownsville. These threats were obviously significant because they envisioned the loss of over half the Des Moines workforce after the Union commenced a lawful economic strike against Titan. Because Taylor's threat was well-publicized (G.C. Ex. 18), the Union filed unfair labor practice charges in early June 1998, and the employees voted to continue their strike on June 20 upon discussing the charges. Thus, Taylor's May 14 bombshell, and subsequent implementation thereof, prolonged the strike and converted what was an economic strike against Titan into an unfair labor practice strike. *C-Line Express*, 292 NLRB 638 (1989).

It is unclear why the General Counsel did not allege a violation of Section 8(a)(3) as a result of Titan's permanent relocation of unit jobs to Brownsville. But it is clear that Titan violated Section 8(a)(1) and (5) refusing to bargain over the relocation of work from Des Moines to Brownsville. Likewise, Titan violated Section 8(a)(1) and (5) by not providing the Union with information about this subject during contract negotiations. Accordingly, Titan will be required to provide the Union with the requested information, and to bargain with the Union over this issue. Further, Titan will be required to restore operations at the Des Moines facility to the status quo ante as of May 14, 1998. See *Lear Siegler, Inc.,* 295 NLRB 857, 861 (1989).

C. The Hiring of Replacement Workers

While the record is unclear how many replacement workers have been hired, when they were hired, and whether they were hired on a temporary or permanent basis, it is clear that Titan threatened to hire permanent replacements on June 18, 1998. This threat violated Section 8(a)(1) because, as explained supra, the Des Moines employees were already engaged in an unfair labor practice strike. *Bozzuto's, Inc.*, 277 NLRB 977 (1985). As for the Union's request for information about those replacement workers, Titan never provided it. But, in its role as the representative of the Des Moines employees, the Union was entitled to such information. *Burkart Foam*, 283 NLRB 351, 356 (1987), enfd. 848 F.2d 825 (7th Cir. 1988). The Respondent's only defense is that it did not have to provide information about "temporary" replacements. But this contention is again without any cited legal support. Moreover, as this strike drags on, it looks more and more like any replacements at Des Moines are permanent. Further, the Respondent fails to explain why the Union had less need for information about "temporary" workers. Therefore, it is concluded that Titan's threat to hire permanent replacements violated Section 8(a)(1), and its refusal to provide information to the Union about those workers violated Section 8(a)(1) and (5). Accordingly, Titan will be required to provide this information to the Union, and to offer all employees who were not permanently replaced reinstatement to their former jobs, upon an unconditional offer to return to work. *Lucky 7 Limousine*, 312 NLRB 770 (1993).

D. Titan's Unilateral Implementation of its June 1998 Offer

The Respondent makes an impressive argument that Titan and the Union were at impasse over all of the five key economic issues—pension benefits, retiree medical benefits, elimination of the two-tier wage system, job security, and reduction of overtime—despite extensive bargaining through June 22, 1998. But the Respondent ignores the legal principle that "[a] finding of impasse presupposes that the parties prior to the impasse have acted in good faith. Generally, a lawful impasse cannot be reached in the presence of unremedied unfair labor practices." *White Oak Coal Co.,* 295 NLRB 567, 568 (1989). Here, Titan committed various unfair labor practices, starting on the first day of the strike, May 1, by terminating the insurance benefits of on-leave employees. Its violations of the Act reached a crescendo when equipment, and over half the jobs, were transferred out of the Des Moines plant. In the Presiding Judge's view, the gravity of these transfers are such that they are inexorably intertwined with each of the unresolved economic issues between Titan and the Union. *Dynatron/Bondo Corp.*, 326 NLRB 1170 (1998); *Noel Corp.*, 315 NLRB 905, 911 (1994), enfd. in relevant part 82 F.3d 1113 (D.C. Cir. 1996). Therefore, because it is concluded that Titan's unremedied unfair labor practices prevented the parties from reaching an agreement, Titan did not bargain to a good faith impasse. Accordingly, because its unilateral implementation of its final offer on June 22, 1998, and prior threat to do so, violated Section 8(a)(1) and (5) of the Act, Titan will be required to rescind the June 22 provisions and bargain in good faith with the Union.

CONCLUSIONS OF LAW

1. The Respondent, Titan Tire Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, the United Steelworkers of America, AFL–CIO, CLC and its Local 164L, is a labor organization within the meaning of Section 2(5) of the Act.

3. Pursuant to paragraphs 5(a), 6(a), 6(b), 11(a)(1), 11(b), 11(c), 16, 17, and 18 of the General Counsel's complaint, the Respondent violated Section 8(a)(1), (3) and (5) of the Act by threatening, on May 1, 1998, to discontinue insurance benefits for those employees on leave at the time the strike commenced, by thereafter unilaterally failing to pay its contributions for premiums for those insurance coverages and/or discontinuing those insurance coverages, and by failing to bargain with the Union over these mandatory subjects.

4. Pursuant to paragraphs 5(b), 11(a)(2), 11(a)(3), 11(b), 11(c), 13(b), 13(c), 13(d), 16, and 18 of the complaint, the Respondent violated Section 8(a)(1) and (5) of the Act on May 14, 1998 by threatening to move equipment and unit jobs permanently out of Des Moines to Brownsville, Texas, by thereafter doing so unilaterally, and by failing to furnish information to, or to bargain with, the Union over these mandatory subjects.

5. Pursuant to paragraph 15 of the complaint, the Respondent's violations of the Act, set forth in paragraph 4, above, prolonged and converted the strike, which began on May 1, 1998 as an economic strike, into an unfair labor practice strike on May 14, 1998.

6. Pursuant to paragraphs 5(c) and 16 of the complaint, on June 17, 1998, when the employees were engaged then in an unfair labor practice strike, the Respondent violated Section 8(a)(1) of the Act by threatening the employees that it would hire permanent replacement workers.

7. Pursuant to paragraphs 13(a), 13(c), 13(d), and 18 of the complaint, the Respondent violated Section 8(a)(1) and (5) of the Act by failing to furnish the Union, after a June 21, 1998 request, with a list of replacement workers.

8. Pursuant to paragraphs 5(d), 12, 14, 16, and 18 of the complaint, the Respondent violated Sections 8(a)(1) and (5) of the Act by threatening to implement unilaterally its last, best and final offer and by later doing so on June 22, 1998, without bargaining to a good faith impasse.

9. The Respondent's unfair labor practices, described in paragraphs 3, 4, 6, 7, and 8, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]